

AN ACT

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to establish employment without tenure within the Educational Service classification, to require that the Mayor seek a voluntary separation incentive for certain employees of the District of Columbia, and to require the Mayor to submit an evaluation of the personnel reform provisions of this act in September 2012; and to amend the Public Education Reform Amendment Act of 2007 to provide that the Director of the Office of Public Education Facilities Modernization shall have maintenance authority at District of Columbia Public Schools facilities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Public Education Personnel Reform Amendment Act of 2008”.

Sec. 2. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 801A (D.C. Official Code § 1-608.01a) is amended as follows:

Amend
§ 1-608.01a

(1) Subsection (a) is amended as follows:

(A) Strike the word “Boards” and insert the word “Board” in its place.

(B) Strike the phrase “the District of Columbia Board of Education for educational employees of the Board of Education and”.

(2) Subsection (b) is amended as follows:

(A) The introductory language is amended by striking the word “Boards” both times it appears and inserting the word “Board” in its place.

(B) Paragraph (2) is amended to read as follows:

“(2)(A)(i) Excluding those employees in a recognized collective bargaining unit, those employees appointed before January 1, 1980, those employees who are based at a local school or who provide direct services to individual students, and those employees required to be

excluded pursuant to a court order (collectively, “Excluded Employees”), a person appointed to a position within the Educational Service shall serve without job tenure.

“(ii) Except for Excluded Employees, the provisions of this paragraph shall apply to all nonschool-based personnel, as defined in section 301(13C), including:

“(I) All Educational Service employees within the District of Columbia Public Schools (“DCPS”)

“(II) All Educational Service employees within the Office of Public Education Facilities Modernization; and

“(III) All Educational Service employees within the Office of the State Superintendent for Education transferred pursuant to the Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-171 *et seq.*).

“(B)(i) A person employed within the Educational Service in DCPS, the Office of the State Superintendent for Education, and the Office of Public Education Facilities Modernization as of the effective date of the Public Education Personnel Reform Emergency Amendment Act of 2008, passed on emergency basis on January 8, 2008 (Enrolled version of Bill 17-567) (“Emergency Act”), who is not an Excluded Employee shall be reappointed noncompetitively to the Educational Service, in accordance with subparagraph (A) of this paragraph.

“(ii) Within 30 days of the effective date of the Emergency Act, the Mayor shall notify in writing each employee of his or her reappointment. The employee shall accept or decline such reappointment within 10 days of receipt of the reappointment notice.

“(iii) A person declining such reappointment shall receive a written 15-day separation notice and shall be entitled to severance pay pursuant to section 2409.

“(iv) An employee who accepts reappointment who is subsequently terminated shall be terminated in accordance with subparagraph (C)(ii) and (iii) of this paragraph.

“(C)(i) A person employed within the Educational Service in DCPS, the Office of the State Superintendent for Education, or the Office of Public Education Facilities Modernization who is not an Excluded Employee, shall be a probationary employee for one year from his or her date of hire (“probationary period”) and may be terminated without notice or evaluation.

“(ii) Following the probationary period, an employee may be terminated, at the discretion of the Mayor; provided, that the employee has been provided a 15-day separation notice and has had at least one evaluation within the preceding 6 months, a minimum of 30 days prior to the issuance of the separation notice.

“(iii) An employee terminated for non-disciplinary reasons may

be given severance pay in accordance with section 903(f).

“(D) The Mayor may terminate without notice or evaluation an employee for the following reasons:

“(i) Conviction of a felony at any time following submission of an employee’s job application;

“(ii) Conviction of another crime at any time following submission of an employee’s job application when the crime is relevant to the employee’s position, job duties, or job activities;

“(iii) Commission of any knowing or negligent material misrepresentation on an employment application or other document given to a government agency;

“(iv) Commission of any on-duty or employment-related act or omission that the employee knew or reasonably should have known is a violation of law; or

“(v) Commission of any on-duty or employment-related act that is gross insubordination, misfeasance, or malfeasance.

“(E) A terminated employee shall retain his or her veterans preference eligibility, if any, in accordance with federal laws and regulations issued by the United States Office of Personnel Management but shall be separated without competition, assignment rights, retreat rights, a right to re-assignment under either the Agency Reemployment Priority Program or the Displaced Employee Program established pursuant to section 2400 of the District of Columbia Personnel Manual, or a right to any internal or administrative review, subject to any right under the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01 *et seq.*), federal law, or common law.

“(F)(i) The Mayor shall establish:

“(I) A positive recruitment program designed to meet current and projected personnel needs;

“(II) A procedure for open competition for initial appointment to the Educational Service, designed to achieve maximum objectivity, reliability, and validity through a practical assessment of attributes necessary to successful job performance and career development, and appointments of persons, made on the basis of merit, by selection from the highest qualified available eligible persons based on specific job requirements, with appropriate regard for affirmative-action goals and veterans preference as provided in Title VII; and

“(III) Written position descriptions for each position within Educational Service and a process for updating the descriptions to maintain accurate and current position descriptions.

“(ii) The Mayor shall provide a written copy of the relevant position description to each new employee and to each reappointed employee upon employment or reappointment.

“(G) Appointments to the Educational Service of persons shall be made in accordance with equal employment opportunity principles, as set forth in Title VII.

“(H) Temporary and other time-limited appointments, which do not confer permanent status, may be made in appropriate cases, at the discretion of the Mayor, including emergency appointments to provide for the maintenance of essential services in situations of natural disaster or catastrophes, where normal-employment procedures are impracticable.

“(I) Within 180 days of the effective date of the Emergency Act, the Mayor shall submit a list to the Council, for informational purposes, of those people employed within the Educational Service in DCPS, the Office of the State Superintendent for Education, and the Office of Public Education Facilities Modernization as of the effective date of the Emergency Act, who, pursuant to subparagraph (B) of this paragraph, declined reappointment and were terminated and who accepted reappointment but were subsequently terminated. The Mayor shall maintain a database of this information on an ongoing basis to be submitted to the Council pursuant to section 5 of the Public Education Personnel Reform Amendment Act of 2008, passed on 2nd reading on January 8, 2008 (Enrolled version of Bill 17-450).

“(J)(i) The Mayor shall establish reduction-in-force procedures, including: “(I) A prescribed order of separation based on District residency and veterans preference;

“(II) Priority reemployment consideration of separated employees; and

“(III) Job sharing and reduced hours, if feasible.

“(ii) Notwithstanding any other provision of law or regulation, an Excluded Employee or a nonschool-based employee shall not be assigned or reassigned to replace a classroom teacher.

“(iii) For the purposes of this subparagraph, the term "reduction-in-force" means a reduction in personnel, the need for which shall be declared by the Mayor, that is necessary due to a lack of funding or the discontinuance of a department, program, or function of an agency. A reduction-in-force shall not be considered a punitive or corrective action as it relates to an employee separated pursuant to the reduction in force and no blemish on an employee's record shall ensue.”.

(3) Subsection (c)(3) is amended by striking the word “Boards” and inserting the word “Board” in its place.

(4) Subsection (d) is amended by striking the word “Boards” wherever it appears and inserting the phrase “Mayor or Board” in its place.

(b) Section 903(a)(4) (D.C. Official Code § 1-609.03(a)(4)) is amended to read as follows:

Amend
§ 1-609.03

“(4)(A) The Mayor may appoint 25 persons to the District of Columbia Public Schools; provided, that each person appointed pursuant to this paragraph shall be domiciled in

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the District within 180 days of appointment and shall remain domiciled in the District of Columbia throughout the term of his or her appointment.

“(B) The Mayor shall make his or her best efforts to ensure ward diversity in the appointments.”

(c) Section 1111(a-1) (D.C. Official Code § 1-611.11(a-1)) is amended to read as follows:

**Amend
§ 1-611.11**

“(a-1) Notwithstanding any other provision of law, rule, or regulation:

“(1) Except for the Chancellor and any Excepted Service employees appointed pursuant to section 903(a)(4), every employee of the District of Columbia Public Schools shall be:

“(A) Classified as an Educational Service employee;

“(B) Placed under the personnel authority of the Mayor; and

“(C) Subject to all rules of the District of Columbia Public Schools;

“(2) Except for the Director and any Excepted Service employees appointed pursuant to section 903(a)(7), every employee of the Office of Public Education Facilities Modernization shall be:

“(A) Classified as an Educational Service employee; and

“(B) Placed under the personnel authority of the Mayor; and

“(3) Except for the State Superintendent for Education and any Excepted Service employees appointed pursuant to section 903(a)(7), every employee transferred from the District of Columbia Public Schools to the Office of the State Superintendent for Education shall be:

“(A) Classified as an Educational Service employee; and

“(B) Placed under the personnel authority of the Mayor.”

(d) Section 1709(b) (D.C. Official Code § 1-617.09(b)) is amended as follows:

**Amend
§ 1-617.09**

(1) Paragraph (1) is amended by striking the phrase “Board of Education” and inserting the phrase “Public Schools” in its place.

(2) Paragraph (5) is amended by striking the phrase “unit; or” and inserting the phrase “or;” in its place.

(3) Paragraph (6) is amended by striking the phrase “of Columbia.” and inserting the phrase “of Columbia; or” in its place.

(4) A new paragraph (7) is added to read as follows:

“(7) Employees within the Educational Service in the District of Columbia Public Schools, the Office of the State Superintendent for Education, and the Office of Public Education Facilities Modernization who serve without tenure pursuant to the Public Education Personnel Reform Amendment Act of 2008, passed on 2nd reading on January 8, 2008 (Enrolled version of Bill 17-450).”

(e) Section 2402(a) (D.C. Official Code § 1-624.02(a)) is amended by striking the phrase “Educational Service and” and inserting the phrase “Educational Service, except those

**Amend
§ 1-624.02**

persons separated pursuant to section 801A(b)(2), and” in its place.

Sec. 3. Rulemaking.

The Mayor shall issue rules to implement the provisions of section 2. The proposed rules shall be submitted to the Council for a 45-day period of review. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

Sec. 4. Voluntary early-retirement request.

The Mayor shall submit a request to the United States Office of Personnel Management that it authorize voluntary early retirement to employees in the Educational Service classification of the District of Columbia Public Schools, the Office of the State Superintendent of Education, and the Office of Public Education Facilities Modernization hired prior to 1987 and entitled to federal benefit payments.

Sec. 5. Evaluation and re-authorization.

On September 15, 2012, the Mayor shall submit to the Council an assessment of the personnel reform enacted by this act, which shall include:

(1) A comprehensive list of the employees terminated pursuant to this act, as described in section 801A(b)(2)(I) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-608.01a(b)(2)(I); and

(2) An assessment of the progress in public education achieved as a result of this act that warrants continuation of the provisions of this act.

Sec. 6. Section 704(6) of the Public Education Reform Amendment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-453(6)), is amended to read as follows:

**Amend
§ 38-453**

“(6) Direct and manage the modernization or new construction of the District of Columbia Public Schools (“DCPS”) facilities by approving and authorizing decisions at every stage of school modernization, including planning, design, maintenance, procurement, and construction, in accordance with the Facilities Master Plan required by the School Modernization Financing Act, effective June 8, 2006 (D.C. Law 16-123; D.C. Official Code § 38-2971.01 *et seq.*); provided, that it shall not manage cleaning and janitorial services at DCPS facilities.”.

Sec. 7. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,

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approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 8. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia